



DIVISION OF  
ENFORCEMENT

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
100 PEARL STREET, SUITE 20-100  
NEW YORK, NY 10004-2616

March 10, 2023

**FILED BY ECF**

Hon. P. Kevin Castel  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007

Re: SEC v. Infinity Q Diversified Alpha Fund, No. 22 Civ. 09608 (PKC)/Resolution of Motion to Intervene for the Limited Purpose of Modifying the Consented to Order Appointing Special Master and Imposing Litigation Injunction (Dkt.#33)

Dear Judge Castel:

Plaintiff Securities and Exchange Commission ("SEC") is pleased to advise the Court that, subject to Court approval, it has reached a resolution of the Opt-Out Plaintiffs' Motion (the "Motion" Dkt.#33) to Intervene for the Limited Purpose of Modifying the Consented to Order Appointing Special Master and Imposing Litigation Injunction (the "Order" Dkt.#15). The SEC and the Special Master appointed in this case, on consent of Defendant, have negotiated the terms of a proposed amended Order, described below, that resolves the Opt-Out Plaintiffs Motion. There are no scheduled Court conferences in this Action

Attached hereto is a redlined Proposed Amended Order which modifies the litigation injunction contained in the Order to exclude (i) actions against non-natural persons who are purported Indemnitees (as defined in the Order) based solely on the Securities Act of 1933 ("Securities Act"); and (ii) civil discovery authorized by federal and state statutes and rules in those actions. The Amended Order also provides that the SEC and the Special Master may seek to reimpose the litigation injunction for good cause shown to protect the assets subject to the Court's jurisdiction, and that the Opt-Out Plaintiffs may seek to modify the injunction for good cause shown to exclude natural persons who are purported Indemnitees covered by the injunction and to challenge actions by the Special Master and his appointment if the Special Master fails to act in the best interests of shareholders.<sup>1</sup> The SEC is not aware of any facts to support the Opt-Out Plaintiffs' allegations that the Special Master should be removed.

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<sup>1</sup> The SEC is simultaneously filing the Proposed Amended Order on the docket in this case for review by the Clerk of the Court.

As described in the SEC's motion and supporting memorandum of law for entry of the original Order (Dkt.#s 10 & 11), the SEC sought entry of the original Order to protect the limited assets of Infinity Q Diversified Alpha Fund (the "Mutual Fund") for the benefit of its shareholders. The SEC and the Special Master believe that the proposed modifications to the Order appropriately balance the due process rights of the Opt-Out Plaintiffs with the SEC's and the Special Master's overall goal of preserving the Mutual Fund's limited assets for the benefit of shareholders.

The Opt-Out Plaintiffs have agreed to withdraw the Motion if the Court enters the Amended Order without prejudice to seek relief according to the terms of the Amended Order, and have provided the SEC staff with a copy of their proposed notice of withdrawal. Accordingly, the SEC respectfully requests that the Court adjourn the remaining briefing schedule on this Motion (Dkt.# 32) and enter the Proposed Amended Order. The SEC and the Special Master are available if the Court has any questions or concerns, as is counsel to the Opt-Out Plaintiffs who so advised the SEC staff.

Respectfully submitted,

/s/Neal Jacobson  
Neal Jacobson  
Trial Counsel

Cc: All counsel of record by ECF